

1 APPEARANCES:

2 FLETCHER & SIPPEL, by
3 MR. JEREMY BERMAN
4 29 North Wacker Drive, Suite 920
5 Chicago, Illinois 60606
6 Appearing for the Petitioner;

7 MS. GLORIA CAMARENA
8 100 West Randolph Street, Suite 6-600
9 Chicago, Illinois 60601
10 Appearing for IDOT;

11 MR. DANIEL POWERS
12 527 East Capitol Avenue
13 Springfield, Illinois 62701
14 Appearing for Staff of the ICC.

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26 SULLIVAN REPORTING COMPANY, by
27 Steven T. Stefanik, CSR

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1		<u>I</u> <u>N</u> <u>D</u> <u>E</u> <u>X</u>			
2	<u>Witnesses:</u>	<u>Direct</u>	<u>Cross</u>	Re- <u>direct</u>	Re- <u>cross</u> By <u>Examiner</u>
3	RAYMOND BAKER	6	20		
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7		<u>E</u> <u>X</u> <u>H</u> <u>I</u> <u>B</u> <u>I</u> <u>T</u> <u>S</u>			
8	<u>Number</u>	<u>For Identification</u>			<u>In Evidence</u>
9	Petitioner Exhibit				
10	No. 2	16			19
11	No. 5	9			19
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1 JUDGE KIRKLAND-MONTAGUE: By the power vested in
2 me by the State of Illinois and the Illinois
3 Commerce Commission, I now call Docket No. T10-0152
4 for hearing. This is in the matter of the Elgin,
5 Joliet and Eastern Railway Company, petitioner,
6 versus the Libertyville Township Road District and
7 the State of Illinois, Department of
8 Transportation.

9 And the petition is regarding the EJ&E
10 seeking an order from the Commission directing that
11 an additional track be constructed at Diamond Lake
12 Road on the EJ&E's -- I'm sorry -- on the EJ&E
13 Company near the Village of Libertyville.

14 May I have appearances, please, starting
15 with EJ&E.

16 MR. BERMAN: Jeremy Berman from Fletcher and
17 Sippel on behalf of the EJ&E. Address is 29 North
18 Wacker Drive, Suite 920, Chicago, Illinois 60606.
19 Phone number is (312) 252-1500.

20 JUDGE KIRKLAND-MONTAGUE: Okay.

21 We have IDOT?

22 MS. CAMARENA: Good afternoon.

1 Gloria Camarena representing the
2 Illinois Department of Transportation. Our offices
3 are 100 West Randolph, Suite 6-600, and my office
4 number is (312) 793-2965.

5 JUDGE KIRKLAND-MONTAGUE: Staff?

6 MR. POWERS: Daniel Powers, Illinois Commerce
7 Commission staff, 527 East Capitol Avenue,
8 Springfield, Illinois 62701. Phone is (847)
9 516-0733.

10 JUDGE KIRKLAND-MONTAGUE: Okay.

11 Mr. Berman, I'll give you the floor to
12 present the petition.

13 MR. BERMAN: The railroad just has one witness
14 to present today and he'll testify about both of
15 their crossings.

16 JUDGE KIRKLAND-MONTAGUE: Okay. Could you stand
17 and raise your right hand, please.

18 (Witness sworn.)

19 JUDGE KIRKLAND-MONTAGUE: Okay. Be seated.

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1 RAYMOND BAKER,
2 called as a witness herein, having been first duly
3 sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY

6 MR. BERMAN:

7 **Q.** Can you please state your name.

8 **A.** Raymond C. Baker, B-a-k-e-r.

9 **Q.** What is your current occupation?

10 **A.** I'm a senior engineer -- a senior manager
11 of engineering for the CN Railway Company.

12 **Q.** Can you briefly describe your job
13 responsibilities?

14 **A.** I previously worked for the EJ&E for 30
15 years, and I'm part of the CN team that's
16 integrating the EJ&E into the CN system.

17 **Q.** Are you familiar with the two crossings
18 that are the subject of the EJ&E's petition today?

19 **A.** Yes.

20 **Q.** Let's start with the Diamond Lake Road
21 crossing.

22 Can you describe the current

1 configuration of this crossing?

2 **A.** Diamond Lake Road is currently a single
3 track location on the EJ&E. Just to the north of
4 that location is where we interchange with the -- a
5 CN company previously known as the WC. To the
6 south, we have a single trackage all the way down
7 to a location in Barrington, Illinois.

8 So it's single track from Diamond Lake
9 Road south to Barrington. It's single track from
10 Diamond Lake north to Waukegan. However, the -- at
11 that point, we have a diverging route that allows
12 us to get onto one of our sister railroads or
13 subsidiaries, the WC, which is a CN railroad, and
14 that is the physical characteristics of the
15 railroad at Diamond Lake Road.

16 **Q.** What's the current crossing protection at
17 Diamond Lake Road?

18 **A.** Gates and flashers.

19 **Q.** And what is the maximum speed of trains
20 across Diamond Lake Road?

21 **A.** Trains that are going on the straight
22 route, which would be main to main, is 45 miles per

1 hour.

2 Q. And how many trains a day does that
3 crossing average currently?

4 A. 10 to 14.

5 Q. Can you describe the vehicular traffic on
6 Diamond Lake Road at the crossing?

7 A. Diamond Lake Road is basically a secondary
8 road. It's underneath the highway authority of
9 Libertyville Township, and it has approximately
10 4900 vehicles a day based upon a -- the DOT ADT.

11 Q. Are you aware of an accident history at
12 this crossing?

13 A. Yes. Diamond Lake Road has had three --
14 no, Diamond Lake Road has had two accidents in the
15 last 30 years.

16 Q. Do you remember the years of those?

17 A. 2005 and -- I got to look real quick --
18 1988 -- or 1980. I'm sorry.

19 Q. And are you familiar with the EJ&E's plans
20 to add a second track at this crossing?

21 A. Yes, I am.

22 Q. What is your involvement with this project?

1 **A.** When the CN purchased the EJ&E, it had
2 filed with the Surface Transportation Board a
3 variety of improvements to connect the EJ&E to the
4 other sister roads of the CN.

5 At Leithton -- or at Diamond Lake Road,
6 which is a railroad station named Leithton, we have
7 this diverging route to go onto the WC either in a
8 northeast direction or in a southeast (sic)
9 direction. And in order to handle additional train
10 capacity, the intent is to add a second track.

11 And there's a companion second track to
12 the south two miles down to Gilmer (phonetic) Road
13 and then a second connection or Y so that two
14 trains could use the EJ&E simultaneously because,
15 presently, the single track requires one train to
16 move at a time.

17 (Whereupon, Petitioner
18 Exhibit No. 5 was
19 marked for identification
20 as of this date.)

21 BY MR. BERMAN:

22 **Q.** I'm going to show you what's been marked as

1 EJ&E proposed Exhibit 5. Do you recognize this
2 exhibit?

3 A. Yes, I do.

4 Q. And can you explain what this exhibit
5 shows?

6 A. This shows the improvements the railroad
7 will make to add the second track. It shows the
8 work that we plan on doing within the highway
9 authority's footprint within Libertyville Township.

10 It shows the other physical
11 characteristics that we plan to change to bring the
12 crossing surface up to ICC standards within 25 feet
13 of the edge of rail.

14 Q. And does this plan accurately show the work
15 that EJ&E plans to do at the crossing?

16 A. Yes, sir.

17 Q. You touched on this already, but can you
18 explain a little bit more about why the second
19 track is needed?

20 A. Yes.

21 The railroad -- the EJ&E from a point
22 south -- and we have to go all the way down to

1 Joliet -- is basically a single main railroad. So,
2 in other words, there's only one track. There's
3 several sidings to allow trains to pass. However,
4 for that distance, only one train can be -- there
5 can be multiple trains moving, but only one train
6 can get by at a time.

7 This will allow the increased train --
8 increased train capacity that the railroad is
9 capable of handling to move at a higher speed
10 through the road crossings at Diamond Lake Road and
11 Illinois Route 83.

12 **Q.** Does the EJ&E expect train operations at
13 the crossing to change if a second track is
14 installed?

15 **A.** Yes, we believe that the train speeds
16 through the crossings will increase because
17 there'll be -- by building the second track down to
18 Gilmer Road, a train will be able to pull -- one
19 train will be able to pull in while another train
20 is moving through the location, where, today, they
21 have to wait until there's an open window to get in
22 that block.

1 **Q.** Are the number of trains expected to
2 increase?

3 **A.** Yes.

4 **Q.** Do you know what the new daily -- average
5 daily train count of the crossing will be?

6 **A.** Approximately 20.

7 **Q.** Has the EJ&E looked into any alternate
8 methods to accommodate the increased train traffic
9 that's expected?

10 **A.** Yes, we've looked at ways to increase the
11 train speed at the existing location.

12 **Q.** And was it determined that adding the
13 second track is the most reasonable alternative to
14 meet EJ&E's goals?

15 **A.** Yes, adding the second track is the most
16 reasonable solution to increase train speed and
17 improve the -- reduce the occupancy at the existing
18 crossings.

19 **Q.** Is this crossing currently designated as a
20 quiet zone?

21 **A.** Yes.

22 **Q.** And will the installation of the second

1 track impact the quiet zone designation?

2 A. Based upon our consultant studies, no.

3 Q. Has the EJ&E conferred with the
4 Libertyville Township Road District regarding this
5 project?

6 A. Yes, we have.

7 Q. And can you talk about those discussions?

8 A. Yes, we've had a variety of communications
9 with William Morgan, who is the highway
10 commissioner for Libertyville Township. And in
11 those discussions, we reviewed the plans with him.
12 We made sure that we met all his highway
13 specifications.

14 We took into account that our work
15 within his right-of-way is going to require an
16 extended road closure. We explain -- he explained
17 to us that in the process of doing this, that he
18 asked us if we would renew a culvert that is not on
19 railroad property, but within the township's
20 occupancy. We indicated we would, in conjunction
21 with the pavement work we plan on doing on Liberty
22 (sic) Township's highway, that we would also renew

1 the culvert for them.

2 We've discussed the road closures with
3 them. We discussed with them the crossing surfaces
4 we would use. We were using the -- his requested
5 pavement spec which comes out of the Lake County
6 Highway Department spec book. He asked for a
7 higher strength pavement material. We'll meet that
8 requirement.

9 And, basically, he indicated that what
10 we have proposed is adequate for the highway
11 authority.

12 **Q.** And how does the EJ&E plan to pay for this
13 project?

14 **A.** We'll -- it will be self-funded.

15 **Q.** Okay. Let's move on to the next crossing,
16 which is the Illinois Route 60/83 crossing.

17 Are you familiar with that location?

18 **A.** Yes, sir.

19 **Q.** And can you describe the current
20 characteristics of that crossing?

21 **A.** It's located very close -- it's located to
22 the south of Diamond Lake Road. It's currently

1 protected by advanced warning signs, crossbucks,
2 flashing lights, gates and bells.

3 The maximum timetable speed for trains
4 is 45 miles an hour. The crossing is underneath
5 the highway authority of IDOT.

6 **Q.** And how many trains per day does this
7 crossing currently average?

8 **A.** Approximately 10 to 14.

9 **Q.** Can you describe the vehicular traffic on
10 Route 60/83 at the crossing?

11 **A.** Yes. Based upon the -- a study conducted
12 by IDOT in 2007, there's approximately 22,900
13 vehicles a day.

14 **Q.** And is there an accident history at this
15 crossing?

16 **A.** Yes, sir.

17 **Q.** How many accidents have been reported?

18 **A.** There have been three accidents in the last
19 30 years. 1982, 1988 and 1989.

20 **Q.** And are you familiar with the project to
21 add a second track at this crossing?

22 **A.** Yes.

1 **Q.** Can you -- is your involvement in this
2 adding the second track here the same as your
3 involvement in adding the second track at the
4 Diamond Lake railroad crossing?

5 **A.** Yes. And as I stated earlier, Diamond Lake
6 Road is approximately 500 feet north of Illinois
7 Route 60/83. So, therefore, the rationale for the
8 second track through Diamond Lake Road is the same.

9 (Whereupon, Petitioner
10 Exhibit No. 2 was
11 marked for identification
12 as of this date.)

13 BY MR. BERMAN:

14 **Q.** And I'm going to show you what's been
15 marked as EJ&E proposed Exhibit 2.

16 Do you recognize this exhibit?

17 **A.** Yes.

18 **Q.** And can you explain what is shown on that
19 exhibit?

20 **A.** This is the proposed addition of the second
21 track with the various pavement specs and
22 cross-sections. This highway cross-section change

1 will meet all the ICC requirements.

2 We also reviewed this particular exhibit
3 with the IDOT District 1 engineer. He had some
4 subsequent changes. All the changes and
5 corrections have been made to IDOT District 1's
6 engineer's expectations.

7 And we also discussed with him that we
8 would need a full road closure to do this work, and
9 he indicated that as long as we followed the
10 standard processes and filled out the necessary
11 road closures and did all the associated paperwork,
12 that the State would support a road closure when we
13 proceeded with the renewal of the grade crossing.

14 **Q.** And does this exhibit accurately show the
15 work that you do and any plans to do at the
16 crossing?

17 **A.** Yes, sir.

18 **Q.** And this -- the second track of this
19 crossing is needed for all the same reasons that
20 it's needed at Diamond Lake Road; is that correct?

21 **A.** Yes. This -- Diamond Lake Road, as I
22 stated earlier, and Illinois Route 83 are on the

1 same single main route. This will allow the
2 railroad to have two trains within proximity of the
3 interlocking at Leithton where we have a diverging
4 route.

5 This is between Gilmer Road and Illinois
6 Route 83. There'll be sufficient length to hold a
7 train, if necessary, without blocking highway
8 traffic. So that when the route opens up where
9 there was a slot for a train to run, it can run
10 closer to track speed to exit the railroad.

11 **Q.** How many trains are expected to go over the
12 crossing after the second track is installed?

13 **A.** Approximately 20.

14 **Q.** Is that 20 per day?

15 **A.** 20 per day.

16 **Q.** And are there any reasonable alternatives
17 to accommodate the increasing train traffic besides
18 adding a second track?

19 **A.** No.

20 **Q.** And this crossing is also a quiet zone; is
21 that true?

22 **A.** Yes.

1 Q. And will installing the second track at
2 this crossing impact that quiet zone designation?

3 A. Per our consultant's studies, no.

4 Q. And does the EJ&E plan to self-fund the --
5 this project as well?

6 A. Yes, sir.

7 MR. BERMAN: I believe that's all the questions
8 I have for this witness.

9 I would just move to admit proposed
10 Exhibits 2 and 5.

11 JUDGE KIRKLAND-MONTAGUE: Just 2 and 5?

12 MR. BERMAN: Yes.

13 JUDGE KIRKLAND-MONTAGUE: Objection?

14 MS. CAMARENA: No.

15 JUDGE KIRKLAND-MONTAGUE: Petitioner's Exhibits
16 2 and 5 are admitted.

17 (Whereupon, Petitioner's
18 Exhibit Nos. 2 and 5 were
19 admitted into evidence as
20 of this date.)

21 JUDGE KIRKLAND-MONTAGUE: Miss Camarena --
22 Mr. Power, do you have any questions for the

1 witness?

2 MR. POWERS: I do.

3 CROSS-EXAMINATION

4 BY

5 MR. POWERS:

6 Q. Mr. Baker, can you explain a little bit how
7 the integration of the EJ&E into the CN was
8 approved?

9 A. It was approved by the STB.

10 Q. Were there any stipulations in that
11 approval to implement any agreements between the CN
12 and any local communities involved?

13 A. There were a variety of voluntary measures
14 and voluntary mitigation agreements that the STB
15 and the CN agreed that they would work with the
16 communities to enter into. That's correct.

17 Q. Are there any that pertain to these two
18 crossings today, any voluntary mitigation
19 agreements?

20 A. We do not have a voluntary mitigation
21 agreement with either IDOT or
22 Libertyville Township.

1 Q. Are there any mitigation agreements with
2 communities that are near these crossings?

3 A. Yes.

4 Q. Okay. Do any of those mitigation
5 agreements have any language pertaining to these
6 crossings?

7 MR. BERMAN: I'm sorry. I'm going to object
8 because these agreements have confidentiality
9 provisions.

10 Although, in another docket, the other
11 ALJ has determined that the confidentiality
12 provisions do not prevent witnesses from testifying
13 about these agreements, but I'd like to object
14 anyway.

15 JUDGE KIRKLAND-MONTAGUE: What -- I'm sorry.
16 What was the question you asked, Mr. Powers, the
17 last question?

18 MR. POWERS: Whether or not there were any
19 voluntary mitigation agreements with communities
20 that are in close proximity to these crossings that
21 are in question today.

22 JUDGE KIRKLAND-MONTAGUE: I'm going to overrule

1 the objection. Just knowing whether they're
2 existence I don't think violates confidentiality.

3 Did you answer that question?

4 THE WITNESS: Yes. Yes.

5 JUDGE KIRKLAND-MONTAGUE: And then what was your
6 next question?

7 THE WITNESS: I did say yes.

8 MR. POWERS: I think I asked whether -- what --
9 what were some of the agreements that were reached
10 pertaining to these crossings in question today.

11 JUDGE KIRKLAND-MONTAGUE: To these particular
12 crossings at issue today?

13 MR. POWERS: Yes.

14 JUDGE KIRKLAND-MONTAGUE: And you objected.

15 Overruled. Let's just see if there was
16 anything regarding these crossings.

17 THE WITNESS: Well, I have no material -- I
18 don't have a copy of the voluntary mitigation
19 agreement for the communities up there with me or
20 it would not be something I would need for what --
21 for what we're doing here today.

22 JUDGE KIRKLAND-MONTAGUE: So you don't -- you're

1 not --

2 THE WITNESS: The CN has 33 voluntary mitigation
3 agreements with the communities up and down the
4 railroad, but it's not something that -- unless
5 there's something specifically that I have to build
6 or do that's related to that agreement, which
7 covers all kinds of safety and all kinds of things,
8 there wouldn't be anything that I would need to
9 know --

10 JUDGE KIRKLAND-MONTAGUE: Okay. All right.

11 That's his answer. He doesn't have any
12 information.

13 BY MR. POWERS:

14 Q. Okay. The next question was, do the two
15 crossings in questions (sic) -- do the highways,
16 Diamond Lake Road and Illinois Route 60/83,
17 intersect in close proximity to these crossings?

18 A. They intersect to the east, but I don't
19 know how many feet.

20 Q. Okay. And will the addition -- your second
21 track addition be closer or farther away to that
22 intersecting of the two highway (sic)?

1 **A.** Now you're going to make me figure out east
2 and west.

3 The second track is being added to the
4 west. Therefore, we won't get any closer.

5 **Q.** All right.

6 **A.** And even if it were closer, it would be 15
7 feet closer.

8 MR. POWERS: I have no further questions, your
9 Honor.

10 JUDGE KIRKLAND-MONTAGUE: Okay. Thank you.

11 Miss Camarena, questions?

12 MS. CAMARENA: I don't have any questions at the
13 moment.

14 JUDGE KIRKLAND-MONTAGUE: Okay. Anything -- any
15 follow-up, Mr. Berman?

16 MR. BERMAN: Nothing further.

17 JUDGE KIRKLAND-MONTAGUE: Okay. I don't think I
18 have anything either.

19 Let me ask the other parties here, both
20 Staff and IDOT, their positions on the petition.

21 Staff?

22 MR. POWERS: Staff doesn't have any objections

1 to the petition.

2 However, we will be requiring that
3 additional signing and pavement marking and highway
4 flashing beacons be installed at both crossings due
5 to the nature of the improvement, which is double
6 tracking, which increases the likelihood of train
7 movements in back to back scenarios which aren't
8 out there right now.

9 And we would move that they be included
10 in the improvement to be installed and paid for by
11 the railroad and then maintained by the road
12 authority's jurisdictions of the two crossings.

13 JUDGE KIRKLAND-MONTAGUE: Okay. Is there -- I'm
14 going to ask you, Mr. Berman. Is that something --
15 or do you have a question?

16 MR. BERMAN: I just have one question.

17 JUDGE KIRKLAND-MONTAGUE: Sure.

18 MR. BERMAN: Will you be requesting the
19 solar-powered beacons as you have in the past?

20 MR. POWERS: Either way. Solar powered or, you
21 know, powered by ComEd.

22 JUDGE KIRKLAND-MONTAGUE: Is that something the

1 railroad has done in the past or you have to
2 consider that or what?

3 THE WITNESS: Well, we've only had -- and
4 Mr. Powers is only request -- we only have one
5 solar-powered flashing light presently ordered,
6 correct?

7 MR. POWERS: To my knowledge, yes.

8 THE WITNESS: Okay. So the highway authority is
9 the people who are going to have to maintain this
10 stuff on a go-forward basis.

11 So if the highway authority wants the
12 railroad to put commercial power in, then you have
13 to have meter services and someone has to pay that
14 bill and then someone has to maintain the advanced
15 warning signs. And it won't be the railroad
16 because that's what Mr. Powers has stated.

17 So we would prefer to install solar, not
18 knowing what the -- the IDOT or
19 Libertyville Township would want, since it's not a
20 standard safety device at every grade crossing.

21 JUDGE KIRKLAND-MONTAGUE: What's not a standard
22 safety device?

1 THE WITNESS: The flashing advanced warning
2 sign.

3 JUDGE KIRKLAND-MONTAGUE: Hm-hmm. Is this solar
4 option -- I assume that's reliable and tested?

5 MR. POWERS: It's an option, yeah. There are
6 some at other installations.

7 JUDGE KIRKLAND-MONTAGUE: Oh, okay. I see.

8 Okay. IDOT, do you have -- could you
9 give your position or IDOT's position on it?

10 MS. CAMARENA: Sure.

11 We have no -- we take no exception to CN
12 adding the second track across Illinois Route 83
13 north of Diamond -- what is it -- Diamond Lake
14 Road.

15 And I believe there have been
16 discussions between our -- one of our regional
17 engineers, Andy, as well as CNN (sic) in regards to
18 IDOT, I believe installing -- or possibly
19 discussions of us installing a flashing beacon, but
20 I don't know if that's been --

21 THE WITNESS: I have not had that conversation
22 and I don't think our consultant who was assisting

1 us on this has had that conversation.

2 MS. CAMARENA: With a Darrell maybe?

3 THE WITNESS: I don't think so.

4 MS. CAMARENA: Okay.

5 THE WITNESS: But if the ICC orders it, we would

6 be happy to install it for the benefit of IDOT and

7 the -- for our one-time involvement.

8 MS. CAMARENA: We'd have no objections to that.

9 JUDGE KIRKLAND-MONTAGUE: Okay.

10 MS. CAMARENA: And we'll work with that.

11 JUDGE KIRKLAND-MONTAGUE: Okay. What I'll do

12 now is mark this heard and taken, if that's all we

13 have.

14 And I -- let me -- before I do that, I'm

15 sorry. This letter from -- there's an E-mail from

16 Libertyville. You didn't request that that be --

17 admitted anyway.

18 Basically, because Libertyville isn't

19 here, any -- I don't see anything from them on the

20 record regarding their position. You can either

21 ask, Mr. Berman, that they file something stating

22 that they agree or what we'll do is go to proposed

1 order, especially since we have this request from
2 staff that would necessarily involve their
3 maintenance of this going forward, do a proposed
4 order so they can respond or not respond and then
5 get a final order.

6 But, again, we are marked heard and
7 taken, and I invite you, Mr. Berman, to file a
8 draft agreed order and that would help expedite
9 getting this to the bench.

10 So with that said, I think we're done.

11 MR. POWERS: Thanks.

12 MR. BERMAN: Thank you.

13 HEARD AND TAKEN. .

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